

REMARKS

Applicants respectfully request reconsideration and allowance of the claims, in light of the remarks made herein. The Examiner is thanked for indicating that claim 10 is allowed.

I. STATUS OF CLAIMS AND FORMAL MATTERS

Claims 10, 12 and 13 are pending in this application. Claims 12 and 13 are amended to change their dependence. No new matter is added.

It is submitted that the claims, herewith and as originally presented, are patentably distinct over the prior art, and that these claims are and were in full compliance with the requirements of 35 U.S.C. §112. The amendments of and additions to the claims, as presented herein, are not made for purposes of patentability within the meaning of 35 U.S.C. §§§§ 101, 102, 103 or 112. Rather, these amendments and additions are made simply for clarification and to round out the scope of protection to which Applicants are entitled. Furthermore, it is explicitly stated that the herewith amendments should not give rise to any estoppel, as the herewith amendments are not narrowing amendments.

II. THE REJECTIONS UNDER §112, 1ST PARAGRAPH, ARE OVERCOME

Claims 9, 12, 13 and 25 were rejected under 35 U.S.C. §112, first paragraph, as allegedly lacking adequate written description and enablement. Claim 25 was cancelled in the Supplemental Amendment filed on June 1, 2004, and therefore should not have been included in the current Office Action. In order to facilitate prosecution, which has already been lengthy, claim 9 is cancelled and claims 12 and 13 are amended to depend from allowed claim 10, rendering this rejection moot. In view of these amendments, the claims are in compliance with 35 U.S.C. §112, first paragraph, and reconsideration and withdrawal of the rejection are requested.

Applicants respectfully point out that the previous Supplemental Amendment was filed following a telephone conference with the Examiner, during which she indicated that claim 9 should be allowable if written as submitted in the Supplemental Amendment. While Applicants recognize the Examiner's right to reconsider, it should be noted that this is the second time the Examiner has indicated allowable subject matter and then reneged. (The first time was on December 11, 2003 when she telephoned Applicants' representative seeking authorization for a minor Examiner's Amendment.) The piecemeal examination that has predominated in this case

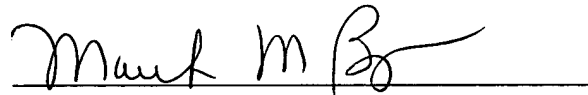
has led to inefficiencies and unnecessary expenditures by both Applicants and the PTO, as well as extreme prejudice to Applicants in terms of shortened patent protection.

CONCLUSION

In view of the remarks and amendments herewith, it is believed that the application is in condition for allowance, or at least in better condition for appeal. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP
Attorneys for Applicant

A handwritten signature in black ink, appearing to read "Marilyn M Brogan", is written over a horizontal line.

By: Marilyn Matthes Brogan
Reg. No. 31,223

Anne-Marie C. Yvon, Ph.D.
Reg. No. 52,390
Tel: (212) 588-0800